

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

E.L.A. and O.L.C.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:20-cv-01524-RAJ

UNITED STATES' ANSWER TO  
COMPLAINT

Defendant United States of America by and through its attorneys, Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Kristen R. Vogel and Nickolas Bohl, Assistant United States Attorneys for said District, hereby answers Plaintiffs' Complaint ("Complaint") as follows in paragraphs that correspond to the numbering in the Complaint.

**GENERAL ANSWER:**

1. Defendant denies any and all allegations in the Complaint not specifically admitted herein.

2. To the extent the headings in Plaintiffs' Complaint are allegations, Defendant denies the allegations.

3. Plaintiffs quote various documents throughout the Complaint, including United States District Court cases, Congressional statutes, reports and testimony, media articles, and investigatory reports. Defendant responds to these citations as follows:

- a. In the specific answers that follow, to the extent a paragraph in the Complaint cites or otherwise references one of these documentary sources solely as support for a factual allegation, Defendant answers the factual allegation in accordance with Federal Rule of Civil Procedure 8 by either admitting, denying, or pleading lack of sufficient information with respect to that factual allegation. The citation of the source underlying the factual allegation is in and of itself not a factual allegation requiring a response.
- b. To the extent a paragraph in the Complaint contains a factual allegation, purports to provide a quotation from a documentary source in whole or in part in a manner requiring a response as to its truthfulness or accuracy, or specifically describes a finding or conclusion of a report, policy, or other cited source, Defendant answers those allegations in accordance with Fed. R. Civ. P. 8.

3. Insofar as the Complaint contains allegations regarding the subjective mindset, knowledge, or motivation of various Executive Branch officials and employees, those allegations are denied throughout the Answer.

4. Insofar as allegations relate to or reference the identities, ages, relationships, and nationalities of Plaintiffs, those allegations are denied throughout the Answer on the ground that Defendant lacks information sufficient to form a belief as to the allegations because Plaintiffs are proceeding pseudonymously. Therefore, any specific admissions or denials, in full or in part, of such allegations are qualified by the provision that Defendant is answering based on its belief, but lack of certainty, as to the identities of Plaintiffs.

### **SPECIFIC ANSWERS BY PARAGRAPH**

#### **INTRODUCTION**

1. Defendant admits that, for a limited time in 2018, the United States Department of Justice implemented a Zero-Tolerance Policy and the United States Department of Homeland Security implemented a corresponding Referral Policy, and that during the period those policies

1 were in place, some families were separated at the United States-Mexico border. President Biden  
2 has denounced the prior practice of separating children from their families at the United States-  
3 Mexico border, condemned the human tragedy that occurred, and established a task force to  
4 continue efforts to reunify families who had been separated. Defendant denies the remaining  
5 allegations.

6 2. The cited material speaks for itself. The remaining allegations are denied.

7 3. The first sentence of this paragraph represents Plaintiffs' characterization of the  
8 case, to which no response is required. Defendant admits that it separated the persons believed to  
9 be Plaintiffs after they entered the United States in June 2018, and that it detained Plaintiff E.L.A.  
10 in Texas while transferring O.L.C. to Lincoln Hall Boys' Haven ("Lincoln Hall"), a state-licensed,  
11 U.S. Department of Health and Human Services' Office of Refugee Resettlement ("ORR")-funded  
12 care provider, in Lincolndale, New York, on June 20, 2018. Defendant lacks information sufficient  
13 to form a belief as to the truth of the allegations in the last sentence of this paragraph and therefore  
14 denies the allegations. The remaining allegations are denied.

15 4. Defendant admits that plaintiff E.L.A. was removed to Guatemala on July 20, 2018.  
16 Defendant lacks information sufficient to form a belief as to the truth of the remaining allegations  
17 in this paragraph and therefore denies the remaining allegations.

18 5. Defendant admits that O.L.C. was in the custody of ORR from June 20, 2018 to  
19 March 10, 2019 and placed at Lincoln Hall. Defendant admits that while O.L.C. was housed at  
20 Lincoln Hall, it made significant incident reports ("SIRs") to ORR, including that a female staff  
21 member showed O.L.C. sexual material on her cell phone and O.L.C. was seen at the health center  
22 for an accidental injury to his groin, and that O.L.C. had a picture of a female staff member in her  
23 undergarments in his possession. Plaintiffs' assertion that Lincoln Hall employees were  
24 Defendant's agents is a conclusion of law to which no response is required. To the extent a

1 response is required, Defendant denies. Defendant otherwise lacks information sufficient to form  
2 a belief about the remaining allegations in this paragraph of the Complaint and therefore denies  
3 the allegations.

4 6. Defendant admits that O.L.C. was reunified with E.L.A. on March 10, 2019. To  
5 the extent this paragraph references the alleged involvement of the district court in *Ms. L v. ICE*  
6 (S.D. Cal.), any court orders in *Ms. L* speak for themselves.

7 7. The allegations in this paragraph are not statements of fact but rather legal  
8 conclusions and characterization of Plaintiffs' cause of action to which no response is required.  
9 To the extent a response is deemed required, Defendant lacks information sufficient to form a  
10 belief as to the truth of Plaintiffs' allegations about physical and emotional harm and therefore  
11 denies these allegations and the remaining allegations.

12 8. This assertion is not a statement of fact but a conclusion of law to which no response  
13 is required. To the extent that a response is required, the assertion is denied.

14 9. Defendant admits that Plaintiffs seek compensation from the United States through  
15 this lawsuit but denies that Plaintiffs are so entitled. Plaintiffs' assertion of extraordinary harm is  
16 a conclusion of law to which no response is required. To the extent that a response is required,  
17 Defendant lacks information sufficient to form a belief as to the truth of Plaintiffs' allegation about  
18 extraordinary harm and therefore denies the allegation.

19 **JURISDICTION & VENUE**

20 10. Defendant admits Plaintiffs invoke the Court's jurisdiction under the provisions of  
21 the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b)(1), but Defendant asserts that whether  
22 jurisdiction exists is a conclusion of law reserved for this Court for determination and to which no  
23 response is required. To the extent a response is deemed required, Defendant denies the allegations  
24 in Paragraph 10 of the Complaint.

12. Defendant admits that the relevant federal agencies did not respond to Plaintiffs' administrative claims.

13. The allegations regarding exhaustion of administrative remedies are not statements of fact but conclusions of law to which no response is required.

14. Defendant lacks information sufficient to form a belief about the current residence of Plaintiffs. The remaining allegations are not statements of fact but conclusions of law to which no response is required. To the extent an answer is required, Defendant denies these allegations.

15. Defendant admits that the person believed to be Plaintiff E.L.A. is a citizen of Guatemala. Defendant admits that the person believed to be Plaintiff E.L.A. is listed as the father on the person believed to be Plaintiff O.L.C.'s birth certificate. Defendant otherwise lacks information sufficient to form a belief about the remaining allegations in this paragraph of the Complaint and therefore denies the allegations.

16. Defendant admits that the person believed to be O.L.C. is a citizen of Guatemala. Defendant admits that the person believed to be Plaintiff E.L.A. is listed as the father on the person believed to be Plaintiff O.L.C.'s birth certificate. Defendant admits that O.L.C. was represented to be 17 years old at the time he was separated from E.L.A. Defendant otherwise lacks information sufficient to form a belief about the remaining allegations in this paragraph of the Complaint and therefore denies the allegations.

17. Defendant admits the person believed to be Plaintiff E.L.A. filed an application for asylum on May 17, 2019, and listed the person believed to be Plaintiff O.L.C. as a dependent.

1 Defendant otherwise lacks information sufficient to form a belief about the remaining allegations  
2 in this paragraph of the Complaint and therefore denies the allegations.

3 18. Defendant denies that it has waived its sovereign immunity as to the claims under  
4 the FTCA. As to the allegation that the United States of America is properly named as a defendant  
5 to each Plaintiff's claims are not statements of fact but conclusions of law to which no response is  
6 required. To the extent that an answer is required, Defendant admits this allegation.

### 7 **FACTUAL ALLEGATIONS**

#### 8 **A. Defendant's Employees Forcibly Separated Plaintiffs When They Sought 9 Asylum in the United States.**

10 19. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
11 of these allegations and on that basis denies them.

12 20. Defendant admits that Plaintiffs entered the United States on or about June 18,  
13 2018, between ports of entry near Roma, Texas. Defendant further admits that Plaintiffs were  
14 taken into custody by U.S. Border Patrol agents and transported to the McAllen Border Patrol  
15 Station. Defendant lacks information sufficient to form a belief as the truth of the remaining  
16 allegations and on that basis denies them.

17 21. Defendant denies that the persons believed to be Plaintiffs were held in a "hielera"  
18 or "icebox" as described in the Complaint. Defendant lacks information sufficient to form a belief  
19 as to the truth of any remaining parts of this allegation and on that basis denies them.

20 22. Defendant lacks information sufficient to form a belief as to the truth of these  
21 allegations and on that basis denies them.

22 23. Defendant admits that E.L.A. was held in ICE custody from June 24, 2018, through  
23 July 20, 2018, and that it reunited Plaintiffs in March 2019.

24 24. Defendant lacks information sufficient to form a belief as to the truth of these

1 allegations and on that basis denies them.

2 **B. Defendant's Employees Subjected E.L.A. to Inhuman Detention Conditions.**

3 25. Defendant denies that the person believed to be the Plaintiff was held in a "hielera"  
4 as described in the complaint. Defendant admits that the person believed to be E.L.A. was held  
5 for approximately six days by CBP. The remaining allegations are denied on grounds that  
6 defendant lacks sufficient knowledge or information to form a belief as to their truth.

7 26. Defendant denies that the person believed to be the Plaintiff was held in a "hielera"  
8 or "icebox" as described in the Complaint. The remaining allegations are denied on grounds that  
9 defendant lacks sufficient knowledge or information to form a belief as to their truth.

10 27. Defendant denies that the person believed to be the Plaintiff was held in a "hielera"  
11 as described in the Complaint. Defendant otherwise lacks information sufficient to form a belief  
12 as to the remaining allegations and therefore denies them.

13 28. Defendant denies that the person believed to be the Plaintiff was held in a "hielera"  
14 as described in the Complaint. Defendant otherwise lacks information sufficient to form a belief  
15 as to the remaining allegations and therefore denies them.

16 29. Defendant lacks information sufficient to form a belief as to the allegations and  
17 therefore denies them.

18 30. Defendant lacks information sufficient to form a belief as to the allegations and  
19 therefore denies them.

20 31. Defendant denies that the person believed to be the Plaintiff was held in a "hielera"  
21 as described in the Complaint. Defendant admits that on or about July 20, 2018, E.L.A. was  
22 convicted of illegal entry under 8 U.S.C. § 1325(a). Defendant lacks sufficient knowledge or  
23 information to form a belief as to the truth of the remaining allegations and on that basis denies  
24 them.

**C. Defendant's Employees Improperly Used a Federal Prosecution to Justify E.L.A.'s Separation from O.L.C.**

32. Defendant admits that on April 6, 2018, then-Attorney General Sessions issued a "Memorandum for Federal Prosecutors Along the Southwest Border" that publicly directed federal prosecutors along the United States–Mexico border "to the extent practicable, and in consultation with DHS, to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a)," which includes illegal-entry misdemeanors. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations and on that basis denies them.

33. Defendant admits that on April 6, 2018, then-Attorney General Sessions issued a "Memorandum for Federal Prosecutors Along the Southwest Border." Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations and on that basis denies them.

34. Defendant denies that the Zero Tolerance Policy served as a pretext or cover for widespread separation of Central American parents and children. Plaintiffs' characterization of referenced testimony are not statements of fact to which a response is required. To the extent a response is deemed required, Defendant responds that the testimony stands for itself and should be read in full context.

35. Defendant admits that after the Zero Tolerance policy was announced, government officials prosecuted many, but not all, individuals who crossed the border illegally, including individuals who did not present in a family unit, and that some would receive a sentence of time served amounting to a few days, while others received longer sentences. Defendant further admits that during the period that the policy was in place, some families were separated at the United States-Mexico border. Defendant lacks sufficient knowledge or information to form a belief as to



1 the truth of the remaining allegations and on that basis denies them.

2 36. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
3 of these allegations and on that basis denies them.

4 37. Defendant admits that E.L.A. was sentenced to time served and a \$10 fine and that  
5 he never entered BOP custody.

6 38. Defendant admits that E.L.A.'s guilty plea and sentencing hearing on the illegal  
7 entry charge took a few hours and that he never entered BOP custody. Defendant admits O.L.C.  
8 was designated an unaccompanied child as a result of E.L.A.'s referral for criminal prosecution.

9 39. Defendant admits O.L.C. was designated an unaccompanied minor therefore  
10 requiring his transfer to ORR custody under the TVPRA. Defendant admits that Plaintiffs entered  
11 the United States without permission. Defendant admits E.L.A. was in CBP custody from June  
12 18, 2018 through June 24, 2018, with the exception of a few hours on June 20, 2018, when he  
13 appeared in federal court. Defendant admits that E.L.A. was held in ICE custody from June 24,  
14 2018 through July 20, 2018. Defendant admits O.L.C. was in CBP custody from June 18, 2018  
15 through June 20, 2018. Defendant denies the remaining allegations.

16 40. Defendant denies that there was no reason to transfer O.L.C. to Lincoln Hall, as the  
17 TVPRA required that he be transferred to ORR custody after his designation as an unaccompanied  
18 minor. Defendant lacks sufficient information to form a belief as to the truth of the allegations,  
19 and on that basis denies them.

20 **D. Defendant's Employees Denied E.L.A. the Right to Seek Asylum and Deported**  
21 **Him in Violation of the INA and a Federal Court Order.**

22 41. Defendant denies that the person believed to be the Plaintiff was held in a "hielera"  
23 as described in the Complaint. Defendant admits that E.L.A. was held in ICE custody at Port  
24 Isabel Service Processing Center in Texas. Defendant lacks sufficient information to form a belief

1 as to the truth of the remaining allegations, and on that basis denies them.

2 42. Defendant admits that E.L.A. spoke with O.L.C. by phone twice while E.L.A. was  
3 held in ICE custody at Port Isabel Service Processing Center. Defendant lacks sufficient  
4 information to form a belief as to the truth of the remaining allegations, and on that basis denies  
5 them.

6 43. Plaintiffs' allegations characterizing the *Ms. L.* decision are not statements of fact  
7 for which a response is required. To the extent a response is required, Defendant avers that *Ms. L.*  
8 decision speaks for itself and denies any allegations characterizing the decision. Defendant lacks  
9 sufficient information to form a belief as to the truth of the remaining allegations, and on that basis  
10 denies them.

11 44. Plaintiffs' allegations characterizing the *Ms. L.* decision are not statements of fact  
12 for which a response is required. To the extent a response is required, Defendant avers that *Ms. L.*  
13 decision speaks for itself and denies any allegations characterizing the decision. Defendant lacks  
14 information sufficient to form a belief as to the remaining allegations in this paragraph of the  
15 Complaint and therefore denies them.

16 45. Defendant admits that the person believed to be Plaintiff E.L.A. presented himself  
17 at the Calexico West Port of Entry in Calexico, California on March 2, 2019. Plaintiffs' allegations  
18 characterizing the *Ms. L.* decision are not statements of fact for which a response is required. To  
19 the extent a response is required, Defendant avers that *Ms. L.* decision speaks for itself and denies  
20 any allegations characterizing the decision.

21 46. Defendant admits that O.L.C. was in the custody of ORR from June 20, 2018 until  
22 he was reunified with E.L.A. on March 10, 2019, in Seattle, Washington.

23 47. Defendant admits that E.L.A. filed an application for asylum on May 17, 2019, and  
24 that O.L.C. was listed as a dependent.

**E. O.L.C. Was Abused While in Detention.**

48. Defendant denies that the person believed to be O.L.C. was held in a “hielera” as described in the Complaint. Defendant admits that the person believed to be O.L.C. was transferred to a facility in Texas. Defendant lacks information sufficient to form a belief as to the remaining allegations in this paragraph of the Complaint and therefore denies them.

49. Defendant lacks information sufficient to form a belief as to the allegations in this paragraph of the Complaint and therefore denies them.

50. Defendant admits that O.L.C. was transferred to ORR custody and admitted to Lincoln Hall on June 20, 2018. Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

51. Defendant admits that ORR maintains a cooperative agreement with Lincoln Hall Boys’ Haven for residential care and services for UACs. Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

52. Paragraph 52 contains quotations from 6 U.S.C. § 279 and 8 U.S.C. § 1232, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the relevant statutes for an accurate representation of their contents. The remaining allegations in this paragraph are not statements of fact but rather legal conclusions and characterization of Plaintiffs’ case to which no response is required. To the extent a response is deemed required, Defendant denies these allegations.

53. Paragraph 53 contains a citation to 45 C.F.R. §§ 411.71-411.72, to which no response is required. To the extent a response is required, Defendant states that ORR prohibits all forms of sexual abuse, sexual harassment, and inappropriate sexual behavior at all care provider facilities, and will make every effort to prevent, detect, and respond to such conduct.

54. The allegations in this paragraph are not statements of fact but rather legal

1 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
2 a response is deemed required, Defendant denies these allegations.

3 55. Defendant admits that O.L.C.'s UAC case file reflects that O.L.C. was generally  
4 provided phone calls on Fridays and he spoke with his father, E.L.A., on June 26, 2018 at 11:00  
5 a.m., on July 10, 2018, at 12:00 p.m., on July 12, 2018 at 10:21 a.m., on September 14, 2018, on  
6 October 26, 2018, October 29, 2018 at 10:15 a.m., on December 14, 2018, and on January 11,  
7 2019. Defendant lacks sufficient information to form a belief as to the truth of the remaining  
8 allegations, and on that basis denies them.

9 56. Defendant admits that O.L.C.'s UAC case file reflects that O.L.C. was scheduled  
10 to be released on July 17, 2018, that the release was canceled due to lack of transportation to the  
11 airport and rescheduled for July 18, 2018, before being suspended until further notice. Defendant  
12 admits that E.L.A. was removed to Guatemala on July 20, 2018. Plaintiffs' assertion that E.L.A.'s  
13 removal was unlawful is a conclusion of law to which no response is required. To the extent that  
14 a response is required, Defendant denies. Defendant lacks sufficient information to form a belief  
15 as to the truth of the remaining allegations, and on that basis denies them.

16 57. Defendant admits that on July 13, 2018 at 5:19 p.m. Lincoln Hall made an SIR  
17 report to ORR that the Cottage Supervisor reported that a staff member showed O.L.C. sexual  
18 material on her cell phone and O.L.C. was seen at the health center for an accidental injury to his  
19 groin. The remaining allegations contained in this paragraph are denied.

20 58. Defendant admits that while O.L.C. was housed at Lincoln Hall, it made the  
21 following eight SIRs to ORR: on June 21, 2018, at 10:05 a.m., Lincoln Hall reported that on June  
22 18, 2018, O.L.C. was traveling with his father, E.L.A., and they were separated when they were  
23 apprehended; on June 21, 2018, at 10:30 a.m. Lincoln Hall reported that O.L.C. reported that he  
24 had consensual sex with his 16-year-old girlfriend; on June 22, 2018, at 3:14 p.m., Lincoln Hall

1 reported that O.L.C. has superficial markings of his initials on his left arm that a friend of his made  
 2 in 2015; on July 13, 2018 at 5:19 p.m. Lincoln Hall reported that the Cottage Supervisor reported  
 3 that a female staff member showed O.L.C. sexual material on her cell phone and O.L.C. was seen  
 4 at the health center for an accidental injury to his groin; on October 30, 2018, 2:37 p.m., Lincoln  
 5 Hall reported that the Cottage Supervisor caught O.L.C. and his peers smoking cigarettes in the  
 6 bathroom; on January 4, 2019, at 3:47 p.m., Lincoln Hall reported that O.L.C. threatened to punch  
 7 one of his peers; on February 6, 2019 at 12:36 p.m., Lincoln Hall reported that O.L.C. threatened  
 8 to run away if he was not released that month; and on February 25, 2019, at 8:26 p.m., Lincoln  
 9 Hall reported that Cottage staff reported O.L.C. having a picture of a female staff member in her  
 10 undergarments in his possession. Defendant denies the remaining allegations contained in this  
 11 paragraph.

12 **1. Abusive and sexualized environment: first sexual abuse Serious Incident**  
 13 **Report.**

14 59. Defendant admits that while housed at Lincoln Hall, the care provider made two  
 15 “Sexual Abuse or Sexual Harassment” SIRs to ORR on July 13, 2018, at 5:19 p.m., in which  
 16 Lincoln Hall reported that the Cottage Supervisor reported that a female staff member showed  
 17 O.L.C. sexual material on her cell phone and O.L.C. was seen at the health center for an accidental  
 18 injury to his groin; and on February 25, 2019, at 8:26 p.m., in which Lincoln Hall reported that  
 19 Cottage staff reported O.L.C. having a picture of a female staff member in an undergarment in his  
 20 possession. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
 21 of the remaining allegations and on that basis denies them.

22 60. Defendant denies the allegations.

23 61. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
 24 of these allegations and on that basis denies them.

62. Defendant admits that while housed at Lincoln Hall, the care provider made a “Sexual Abuse or Sexual Harassment” SIR to ORR on July 13, 2018, at 5:19 p.m., in which Lincoln Hall reported that the Cottage Supervisor reported that a female staff member showed O.L.C. sexual material on her cell phone. Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

63. Defendant lacks sufficient knowledge or information to form a belief as to the truth of these allegations and on that basis denies them.

64. Defendant admits that while housed at Lincoln Hall, the care provider made a “Sexual Abuse or Sexual Harassment” SIR to ORR on July 13, 2018, at 5:19 p.m., in which Lincoln Hall reported that the Cottage Supervisor reported that a female staff member showed O.L.C. sexual material on her cell phone and O.L.C. was seen at the health center for an accidental injury to his groin. It was noted that the staff member had been sent home, the State of New York’s Justice Center was notified, and it was deemed that it was not necessary at the time to notify law enforcement. In a subsequent addendum to the SIR, dated July 20, 2018, Lincoln Hall reported that the assigned clinician met with O.L.C., who denied ever using any staff member’s phone to play video games or see videos. O.L.C. reported staff members in the cottage do not allow them to use their personal phones. On November 2, 2020, Lincoln Hall reported in a subsequent addendum that the incident, referred to as incident #101-313-954-98101, was reported to the State of New York’s Justice Center in July 2018; and the Justice Center did not investigate the incident and referred the case to the State Licensing. Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

**2. O.L.C. was medicated without parental consent and placed in isolation.**

65. Defendant lacks sufficient knowledge or information to form a belief as to the truth of these allegations and on that basis denies them.

1           66. Defendant admits that while housed at Lincoln Hall, the care provider made an SIR  
2 to ORR on February 6, 2019 at 12:36 p.m., reporting that O.L.C. threatened to run away if he was  
3 not released that month. It was noted that the clinician explored the threat with O.L.C. who reported  
4 that he was bored and could not wait anymore. In response to O.L.C.'s threat to run away, it was  
5 noted that the minor was put on close supervision. Defendant lacks sufficient information to form  
6 a belief as to the truth of the remaining allegations as to what O.L.C. told his counselor, and on  
7 that basis denies them.

8           67. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
9 of these allegations and on that basis denies them.

10          68. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
11 of these allegations and on that basis denies them.

12          69. Defendant admits that O.L.C.'s UAC case file reflects that following his threat to  
13 run away, O.L.C. was put under close supervision and was placed in one-to-one observation.  
14 Defendant lacks sufficient knowledge or information to form a belief as to the truth of the  
15 remaining allegations and on that basis denies them.

16          70. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
17 of these allegations and on that basis denies them.

18          71. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
19 of these allegations and on that basis denies them.

20                   **3. Lincoln Hall staff subjected O.L.C. to physical harm and insults.**

21          72. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
22 of these allegations and on that basis denies them.

23          73. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
24 of these allegations and on that basis denies them.

1           **4. Abusive and sexualized environment: second sexual abuse Serious Incident**  
2           **Report.**

3           74. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
4 of these allegations and on that basis denies them.

5           75. Defendant admits that on February 25, 2019, at 8:26 p.m., Lincoln Hall made an  
6 SIR to ORR, reporting that Cottage staff reported O.L.C. having a picture of a female staff member  
7 in an undergarment in his possession. Defendant lacks sufficient information to form a belief as  
8 to the truth of the remaining allegations, and on that basis denies them.

9           **F. Defendant's Conduct Harmed Plaintiffs.**

10          76. The allegations in this paragraph are not statements of fact but rather legal  
11 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
12 a response is deemed required, Defendant lacks sufficient information to form a belief as to the  
13 truth of the allegations about physical and emotional harm, and on that basis denies them.

14          77. Defendant denies that E.L.A. lost eight pounds while detained. Defendant lacks  
15 sufficient information to form a belief as to the truth of the remaining allegations, and on that basis  
16 denies them.

17          78. Defendant lacks sufficient information to form a belief as to the truth of the  
18 allegation that O.L.C. suffers from anxiety and depression. The remaining allegations in this  
19 paragraph are not statements of fact but rather legal conclusions and characterization of Plaintiffs'  
20 case to which no response is required. To the extent a response is deemed required, Defendant  
21 denies these allegations.

22          79. Defendant admits that while housed at Lincoln Hall, the care provider made two  
23 "Sexual Abuse or Sexual Harassment" SIRs to ORR on July 13, 2018, at 5:19 p.m., in which  
24 Lincoln Hall reported that the Cottage Supervisor reported that a female staff member showed



1 O.L.C. sexual material on her cell phone and O.L.C. was seen at the health center for an accidental  
2 injury to his groin; and on February 25, 2019, at 8:26 p.m., in which Lincoln Hall reported that  
3 Cottage staff reported O.L.C. having a picture of a female staff member in an undergarment in his  
4 possession. Defendant lacks sufficient information to form a belief as to the truth of the remaining  
5 allegations, and on that basis denies them.

6 80. The first sentence is not a statement of fact but a conclusion of law to which no  
7 response is required. To the extent that a response is required, the sentence is denied. The  
8 remaining allegations are also denied.

9 81. The allegations in this paragraph are not statements of fact but rather legal  
10 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
11 a response is deemed required, Defendant lacks sufficient information to form a belief as to the  
12 truth of the allegations about trauma, and on that basis denies them. Defendant denies the  
13 remaining allegations.

14 82. The allegations in this paragraph are not statements of fact but rather legal  
15 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
16 a response is deemed required, Defendant denies these allegations.

17 **FIRST CLAIM FOR RELIEF**  
18 **Intentional Infliction of Emotional Distress**

19 83. This paragraph merely incorporates allegations answered above. Defendant  
20 restates and realleges all preceding paragraphs as if fully set forth herein.

21 84. The allegations in this paragraph are not statements of fact but rather legal  
22 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
23 a response is deemed required, Defendant denies these allegations.

24 85. The allegations in this paragraph are not statements of fact but rather legal

1 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
2 a response is deemed required, Defendant denies these allegations.

3 86. The allegations in this paragraph are not statements of fact but rather legal  
4 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
5 a response is deemed required, Defendant denies these allegations.

6 87. The allegations in this paragraph are not statements of fact but rather legal  
7 conclusions and characterization of Plaintiffs' case to which no response is required. To the extent  
8 a response is deemed required, Defendant denies these allegations.

9 **SECOND CLAIM FOR RELIEF**  
10 **Abuse of Process**

11 88. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
12 is necessary.

13 89. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
14 is necessary.

15 90. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
16 is necessary.

17 91. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
18 is necessary.

19 92. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
20 is necessary.

21 **THIRD CLAIM FOR RELIEF**  
22 **Negligence – Family Separation**

23 93. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
24 is necessary.

94. These allegations were dismissed on the June 3, 2022, Order. As such, no response

1 is necessary.

2 95. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
3 is necessary.

4 96. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
5 is necessary.

6 97. These allegations were dismissed on the June 3, 2022, Order. As such, no response  
7 is necessary.

8 **FOURTH CLAIM FOR RELIEF**  
9 **Negligence – O.L.C.’s Time in ORR Custody**

10 98. This paragraph merely incorporates allegations answered above. Defendant  
11 restates and realleges all preceding paragraphs as if fully set forth herein.

12 99. The allegations in this paragraph are not statements of fact but rather legal  
13 conclusions and characterization of Plaintiffs’ case to which no response is required. To the extent  
14 a response is deemed required, Defendant denies these allegations.

15 100. The allegations in this paragraph are not statements of fact but rather legal  
16 conclusions and characterization of Plaintiffs’ case to which no response is required. To the extent  
17 a response is deemed required, Defendant denies these allegations.

18 101. The allegations in this paragraph are not statements of fact but rather legal  
19 conclusions and characterization of Plaintiffs’ case to which no response is required. To the extent  
20 a response is deemed required, Defendant denies these allegations.

21 102. The allegations in this paragraph are not statements of fact but rather legal  
22 conclusions and characterization of Plaintiffs’ case to which no response is required. To the extent  
23 a response is deemed required, Defendant denies these allegations.

1 The remainder of Plaintiffs' Complaint contains a prayer for relief to which no response is  
2 required. To the extent a response is required, Defendant denies the Plaintiffs' Prayer.  
3 Furthermore, the United States denies all allegations not specifically admitted above.

4 **AFFIRMATIVE AND OTHER DEFENSES**

5 1. The Court lacks subject matter jurisdiction over Plaintiffs' claims.

6 2. Plaintiffs' claims are barred to the extent that they are based on the exercise or  
7 performance or the failure to exercise or perform a discretionary function or duty. 28 U.S.C. §  
8 2680(a).

9 3. Plaintiffs' claims are barred to the extent that they are based on the execution of  
10 federal statutes or regulations. 28 U.S.C. § 2680(a).

11 4. Plaintiffs have failed to state a claim on which relief may be granted in whole or in  
12 part.

13 5. Defendant, through employees, did not owe a legal duty to Plaintiffs.

14 6. Defendant, through employees, did not breach a legal duty owed to Plaintiffs.

15 7. Defendant has waived its sovereign immunity only for the actions of "employees  
16 of the government" as defined in 28 U.S.C. § 2671.

17 8. Acts or omissions of Defendant, through employees, were not the proximate cause  
18 of injury to Plaintiffs.

19 9. In the event Defendant is found to have been negligent or otherwise wrongful,  
20 which negligence or wrongful conduct is denied, the superseding and intervening negligence or  
21 wrongful conduct of third parties, for whom Defendant cannot be held liable, broke any causal  
22 connection between the Defendant's negligence or wrongful conduct and Plaintiffs' alleged  
23 injuries, cutting off the legal effect of Defendant's negligence or wrongful conduct.

1           10.     Plaintiffs' recovery of damages, if any, is limited by federal and applicable state  
2 law.

3           11.     Plaintiffs' recovery against Defendant, if any, is limited to the amount stated in  
4 timely and properly presented administrative claims. 28 U.S.C. § 2675(b). To the extent Plaintiffs  
5 have not timely or properly presented administrative tort claims, or seek relief different from, or  
6 in excess of, that set forth in a timely and properly filed administrative tort claim, Plaintiffs have  
7 not exhausted their administrative remedies.

8           12.     Plaintiffs may not recover punitive damages, non-monetary damages, or pre-  
9 judgment interest under the Federal Tort Claims Act. 28 U.S.C. § 2674.

10          13.     To the extent the Court enters a money judgment against Defendant, Plaintiffs are  
11 entitled to post-judgment interest only in accordance with the provisions of 28 U.S.C. § 1961(b)  
12 and 31 U.S.C. § 1304(b).

13          14.     Plaintiffs' claims are barred by any exception to or limitation on Defendant's  
14 waiver of sovereign immunity.

15          15.     Under the Federal Tort Claims Act, Defendant only may be held liable in the same  
16 manner and to the same extent as a private individual under like circumstances. 28 U.S.C. § 2674.

17          16.     To the extent that there are persons who were comparatively at fault, whether or  
18 not they are currently parties to this lawsuit, principles of comparative fault apply and liability, if  
19 any, must be apportioned or any judgment reduced as set forth under applicable state law.

20          17.     Plaintiffs' claims are barred or diminished by Plaintiffs' failure to mitigate  
21 damages.

22          18.     Plaintiffs' claims are barred to the extent they are based on misrepresentations. 28  
23 U.S.C. § 2680(h).

